



July 25, 2008

By E-Mail to: rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
Attn: Nancy M. Morris, Secretary

**Re: Proposed Rules for Nationally Recognized Statistical Rating Organizations
Release No. 34-57967 (File No. S7-13-08)**

Ladies and Gentlemen:

This letter is submitted on behalf of the Structured Products Association in response to the request of the Securities and Exchange Commission (the "Commission" or the "SEC") for comments on Release No. 34-57967 (the "Release"). The Release sets forth proposed rules that aim to increase transparency and avoid conflicts of interest in the credit rating process. We note that at or about the same time that the Commission published the Release, the Commission also published several other proposed revisions to the Commission's rules and regulations that refer to and rely upon credit ratings. We are not commenting on those additional rule proposals.

The comments presented in this letter represent the views of the Structured Products Association (the "SPA" or the "Association"). The Structured Products Association is a New York-based trade group. The Association's mission includes positioning structured products as a distinct asset class; promoting financial innovation among member firms; developing model "best practices" for members and their firms; and identifying legal, tax, compliance and regulatory challenges to the structured products industry. The Association was the first trade organization for structured products in the United States and now has more than 2,000 members, including members from securities exchanges, self-regulatory

tailored in order to offer investors exposure to particular risk/return profiles that are otherwise unavailable or that would be difficult to access for the investor. Structured products may be issued as registered securities, or may be offered pursuant to an exemption from the registration requirements of Section 5 of the Securities Act of 1933, as amended (the “Securities Act”). Prior to the securities offering reforms in 2005,² the Securities Act contained a definition of a “structured product” in Rule 434 relating to prospectus delivery requirements.³

Specific structured products are typically not assigned a credit rating. Instead, the structured product is typically evaluated by investors based on the applicable short-term or long-term credit rating of its issuer. However, in some cases, issuers of, and investors in, structured products may require that a structured product be rated by a credit ratings agency. A rating may be required in order for certain classes of investors to be permitted to purchase a product or in order to comply with FINRA Rule 2720. In those cases where a rating is required or deemed desirable, issuers of structured products or the financial intermediaries that create and design these products work closely with ratings agencies in order to obtain a rating for the products.

As we discuss further below, we believe that the Commission’s principal focus in the Release and related rule proposals is to promote greater transparency and reliability in the ratings of mortgage-backed and asset-backed securities, including residential mortgage-backed securities, that are at the root of the current credit crisis. We do not believe that the Commission intended to address in the Release and related rule proposals the ratings process for other securities, nor do we believe that the proposed rules set forth in the Release are appropriate for structured products, in light of their different structure, economics and risks. In order to avoid any ambiguity and in order to prevent any chilling effect on a growing segment of the market, the Association recommends that the Commission clarify the intended scope of the Release in its final rules.

² SEC Release Nos. 33-8591; 34-52056; IC-26993; FR-75.

³ Former Rule 434(g) provided as follows: “For purposes of this section, *structured securities* shall mean securities whose cash flow characteristics depend upon one or more indices or that have embedded forwards or options or securities where an investor’s investment return and the issuer’s payment obligations are contingent on, or highly sensitive to, changes in the value of underlying assets, indices, interest rates or cash flows.”

The Association also points out that the major NSROs often make publicly available statements as to their policies and procedures for assigning ratings to different types of products. These releases, which are usually widely available to issuers, underwriters and the investing public, facilitate the exchange of information among the parties to a transaction, on the one hand, and the NSROs, on the other hand, without creating a conflict of interest. In order to remove any doubt as to their permissibility, we would recommend that any rules that the Commission adopt exclude from their coverage such publicly-available, widely disseminated, indications of NSRO standards.

Enhanced Disclosure of Information

In the Release, the Commission requires the public disclosure of information provided to an NSRO by an issuer, underwriter, sponsor, depositor or trustee. The Commission suggests in its release that making additional information provided to the NSROs available to the public will promote transparency in the initial ratings process, as well as encourage the issuance of ratings by NSROs not hired by the arranger of a transaction.

The proposed rule would require that all information provided to the NSROs by the issuer, underwriter, sponsor, depositor or trustee that is used in determining the initial credit rating and performing credit rating surveillance on the security would be subject to the disclosure requirement. This would include information concerning the characteristics of the assets underlying or referenced by the security, and the security's legal structure. For example, in the case of a structured product that references hedge fund returns or fund of fund returns, the proposed rule would require detailed disclosure relating to the underlying fund(s).

In certain cases, there are legal prohibitions regarding disclosure of information regarding referenced assets. For example, in the case of a structured product that references hedge fund returns or fund of fund returns, would these regulations require that the offering memorandum for the hedge fund be made public? Publication of an offering memorandum for an underlying security that is itself a restricted security that is not the subject of a registration statement would seem to be inconsistent with existing securities regulations. In the case of a structured product that provides an investor with a return that is linked to a customized index, it would seem that the proposed rule change would require disclosure of detailed information regarding the customized index. Much of this information would be regarded as highly proprietary by the index provider or financial institution that sponsors the index. If the index meets all of the requirements of the Exchange Act and any securities exchange (if applicable), it is difficult to see what, if any, additional regulatory objective is met by requiring additional disclosure.

In the Proposing Release, the Commission suggests that publication of all of this extraneous information will encourage other NSROs to provide unsolicited ratings.

